

AMENDED IN ASSEMBLY MAY 24, 2011
AMENDED IN ASSEMBLY APRIL 25, 2011
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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 81

**Introduced by Assembly Member Beall
(Coauthor: Assembly Member Jeffries)**

January 4, 2011

An act to add and repeal Section 6357.8 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 81, as amended, Beall. Sales and use taxes: exemptions: fuel and petroleum products: air common carriers.

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law provides various exemptions from that tax, including an exemption for the gross receipts from the sale of, and the storage, use, or other consumption of, fuel and petroleum products sold to an air common carrier for immediate consumption or shipment in the conduct of its business on an international flight.

This bill would, on or after January 1, 2012, exempt from those state taxes, gross receipts or sales price in excess of the average spot price

over the previous 5 years, per gallon, derived from the sale in this state of, and the storage, use, or other consumption in this state of, fuel and petroleum products sold to or purchased by an air common carrier for consumption or shipment in the conduct of its business on a domestic flight, as specified. The bill would repeal these provisions on January 1, 2017, unless *the Legislative Analyst's Office, in cooperation with the Employment Development Department*, makes a specified finding, in which case the bill would repeal these provisions on January 1, 2020.

This bill would also require the State Board of Equalization, beginning on January 1, 2013, and annually thereafter, to submit a report to the Legislature setting forth the state fiscal impact of the exemption, and would require *the Legislative Analyst's Office, in cooperation with the Employment Development Department*, to submit a report to the Legislature and the Department of Finance on or before October 1, 2016, determining whether *a net increase of 2,000 or more airline industry jobs* have been or are expected to be created *in California* by the bill on or before January 1, 2017.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated into these laws.

This bill would specify that this exemption does not apply to local sales and use taxes or transactions and use taxes, ~~unless the governing body of the taxing county, city, or district authorizes an exemption and provides notice to the board on or before December 1, 2014.~~

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6357.8 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 6357.8. (a) (1) On and after January 1, 2012, and before
- 4 January 1, 2020, there are exempted from the taxes imposed by
- 5 this part, the gross receipts or sales price in excess of the average
- 6 spot price over the previous five fiscal years, per gallon, as

1 determined by the board, derived from the sale in this state of, or
2 the storage, use, or other consumption in this state of, fuel and
3 petroleum products sold to or purchased by an air common carrier
4 for consumption or shipment in the conduct of its business as an
5 air common carrier, on a domestic flight.

6 (2) For application in the 2011–12 fiscal year, the board shall,
7 on or before October 1, 2011, determine the average spot price
8 over the previous five fiscal years, per gallon, derived from the
9 sale in this state of, or the storage, use, or other consumption in
10 this state of, fuel and petroleum products sold to or purchased by
11 an air common carrier for consumption or shipment in the conduct
12 of its business as an air common carrier, on a domestic flight.

13 (3) For application in the 2012–13 fiscal year and each fiscal
14 year thereafter, the board shall, on or before March 1 preceding
15 that fiscal year determine the average spot price over the previous
16 five fiscal years, per gallon, derived from the sale in this state of,
17 or the storage, use, or other consumption in this state of, fuel and
18 petroleum products sold to or purchased by an air common carrier
19 for consumption or shipment in the conduct of its business as an
20 air common carrier, on a domestic flight.

21 (b) To qualify for the exemption, the air common carrier shall
22 furnish to the seller an exemption certificate in the form prescribed
23 by the board. Acceptance in good faith of that certificate shall
24 relieve the seller from liability for that portion of the sales tax
25 exempted under this section.

26 (c) For purposes of this section, the following definitions apply:

27 (1) “Air common carrier” ~~has the same meaning as that set forth~~
28 ~~in Section 23046 of the Business and Professions Code.~~ *means*
29 *any person who engages in the business of transporting persons*
30 *or property for hire or compensation and who offers these services*
31 *indiscriminately to the public or to some portion of the public.*

32 (2) “Domestic flight” means a flight whose final destination is
33 a point inside of the United States.

34 (d) Any air common carrier claiming exemption under this
35 section that is not required to hold a valid seller’s permit, shall be
36 required to register with the board and obtain a fuel exemption
37 registration number, and shall be required to file returns as the
38 board may prescribe, either if the board notifies the carrier that
39 returns must be filed or if the carrier is liable for taxes based upon

1 consumption or transportation of fuel or petroleum products
2 erroneously claimed as exempt under this section.

3 (e) An air common carrier claiming an exemption under this
4 section, upon request, shall make available to the board records,
5 including, but not limited to, a copy of a log abstract, an air waybill,
6 or a cargo manifest, documenting its consumption or transportation
7 of the fuel or petroleum products on a domestic flight and the
8 amount claimed as exempt. If the carrier fails to provide these
9 records upon request, the board may revoke the carrier's fuel
10 exemption registration number.

11 (f) The board may require any air common carrier claiming an
12 exemption under this section and required to obtain a fuel
13 exemption registration number, to place with it such security as
14 the board may determine pursuant to Section 6701.

15 (g) Pursuant to this section, any use of the fuel and petroleum
16 products by the purchasing carrier, other than that incident to the
17 delivery of the fuel and petroleum products to the carrier and the
18 consumption or transportation of the fuel and petroleum products
19 by the carrier on a domestic flight for use in the conduct of its
20 business as a common carrier, or a failure of the carrier to document
21 its consumption or transportation of the fuel and petroleum
22 products on a domestic flight, shall subject the carrier to liability
23 for payment of sales tax as if it were a retailer making a retail sale
24 of the property at the time of that use or failure, and the sales price
25 of the property to it shall be deemed to be the gross receipts from
26 the retail sale.

27 (h) ~~(4)~~ Notwithstanding any provision of the Bradley-Burns
28 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
29 with Section 7200)) or the Transactions and Use Tax Law (Part
30 1.6 (commencing with Section 7251)), the exemption established
31 by this section shall not apply with respect to any tax levied by a
32 county, city, or district pursuant to, or in accordance with, either
33 ~~of those laws, unless approved by the local government that would~~
34 ~~otherwise receive the revenues derived from the taxes imposed~~
35 ~~under those laws.~~ *of those laws.*

36 ~~(2) The governing body of any county, city, or district may enact~~
37 ~~an ordinance to authorize the exemption as described in subdivision~~
38 ~~(a) with respect to taxes levied by that entity, and shall notify the~~
39 ~~State Board of Equalization of this action on or before December~~
40 ~~1, 2011.~~

1 (i) (1) On January 1, 2013, and annually thereafter, the State
2 Board of Equalization shall submit a report to the Legislature
3 setting forth the state fiscal impact of the exemption allowed under
4 this section.

5 (2) ~~(A) The Employment Development Department—The~~
6 *Legislative Analyst's Office, in cooperation with the Employment*
7 *Development Department*, shall submit a report to the Legislature
8 and the Department of Finance on or before October 1, 2016,
9 determining whether *a net increase of 2,000 or more airline*
10 *industry jobs* have been created, or are expected to be created, *in*
11 *California* on or before January 1, 2017, as a result of this section.

12 ~~(B) The requirement for submitting a report imposed under~~
13 ~~subparagraph (A) is inoperative on October 1, 2020, pursuant to~~
14 ~~Section 10231.5 of the Government Code.~~

15 (3) A report to be submitted pursuant to ~~paragraphs (1) and (2)~~
16 *paragraph (1)* shall be submitted in compliance with Section 9795
17 of the Government Code.

18 (j) This section shall remain in effect only until January 1, 2017,
19 and as of that date is repealed, unless *the Legislative Analyst's*
20 *Office, in cooperation with the Employment Development*
21 *Department*, makes a finding on or before January 1, 2017, that *a*
22 *net increase of 2,000 or more airline industry jobs* have been
23 created *in California* as a result of this section, in which case this
24 section shall remain in effect until January 1, 2020, and as of that
25 date is repealed.

26 ~~SEC. 2. Notwithstanding Section 2230 of the Revenue and~~
27 ~~Taxation Code, no appropriation is made by this act and the state~~
28 ~~shall not reimburse any local agency for any sales and use tax~~
29 ~~revenues lost by it under this act.~~

30 ~~SEC. 3.~~

31 SEC. 2. This act provides for a tax levy within the meaning
32 of Article IV of the Constitution and shall go into immediate effect.